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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 August 2018]

* Issued as received, in the language(s) of submission only.

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Indian administered Kashmir - bench mark of behaviour, number and location for Indian forces in the UN Security Council Resolution of 21 April 1948.

United Nations High Commissioner for Human Rights in para 40 of his 14 June 2018 report on the "the Situation of Human Rights in Kashmir" has duly highlighted that the figure of 500,000 to 700,000 Indian troops stationed in Indian administered part of Kashmir make "Kashmir one of the most militarised zones in the world". It is not only the number but also the introduction of laws, like Armed Forces (Jammu and Kashmir) Special Powers Act, which allow these forces to operate above law and cause a gross violation of human rights. These forces are used as an instrument of coercion to manage the people who continue to press for a UN supervised free and fair vote to determine their future.

Human Rights situation in the Indian administered part of Kashmir is a challenge to the civilised world including the Government and people of India. People of all faiths in Kashmir have been recognised for their right to 'equality' and 'self-determination'. However, it is the Muslim citizen of the State who remains a target of violence and massive violation of human rights. He is subjected to arrest, inhumane and degrading treatment, torture, custodial killing, involuntary disappearances, rape and are blinded by the use of pellet guns during peaceful protests.

The civilised world represented at the UN through General Assembly, Security Council, and now through the UN Human Rights Council, have concluded at the 284th meeting of the Security Council on 17 April 1948 that "Kashmir dispute is the greatest and the gravest single issue in international affairs."

The civilised world (including India and Pakistan), through the United Nations Security Council at its 606th meeting on 6 November 1952 has concluded in para 34 that "The ultimate objective of a fair and impartial plebiscite under the auspices of the United Nations has, after all, been written into solemn agreements by the two governments and endorsed by this Security Council. These agreements have been affirmed and reaffirmed by the two governments many times during the last three and a half years."

People in the Indian sub-continent and people of Kashmir would have prospered and there would have been no abuse of their human rights, if the civilised world represented in the UN had kept its calendar of holding a UN supervised free and fair referendum either in March 1948 as proposed by Pakistan or between April to October 1948 as proposed by the Great Britain.

Human Rights Council as a genuine part of the civilised world represented at the UN, while considering the report of the UN High Commissioner for Human Rights, has to reconcile the finding in para 40 that "Kashmir is one of the most militarised zones in the world", with the bench mark of behaviour, number and location set for Indian forces in the UN Security Council Resolution of 21 April 1948.

The bench mark set for the behaviour, number and location of Indian forces, in para 2 ©, (i), (ii) and (iii) is as follows:

That the presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State;

That as small a number as possible should be retained in forward areas;

That any reserve of troops which may be included in the total strength should be located within their present base area.

Human Rights Council may need to make a finding that UN High Commissioner's report on "the Situation of Human Rights in Kashmir," although a commendable work, has not addressed the issue of 500,000 to 700,000 Indian troops on its merit. Indian forces in Kashmir remain in violation of the terms and conditions, under which they were granted a temporary admission on 27 October 1947. These troops continue to violate the conditions placed on their behaviour, number and location in the UN Resolution of 21 April 1948. Indian troops had to be 'held in areas to be agreed upon with the Plebiscite Administrator' appointed by the UN.

On the basis of OHCHR report, UN Secretary General's report, written statements by NGOs, oral interventions by NGOs, interventions by India, Pakistan, OIC other member States who keep the bench mark of equity and fairness, in the promotion and protection of human rights, Council needs to respond to a 'grave situation' created by the heavy militarization in the Indian administered part of Kashmir. Para 5 of 21 April 1948 UN Security Council Resolution,

needs to be recommended for invocation, to the UN General Assembly and UN Security Council. It reads, "If the local forces should be found to be inadequate, the Commission, subject to the agreement of both the Government of India and the Government of Pakistan, should arrange for the use of such forces of either Dominion as it deems effective for the purpose of pacification.

Human Rights Council has to intervene in the interests of right to life and protection of human rights in Kashmir. It has two important reports and the agreed narrative of the civilised world on a UN supervised vote in Kashmir to benefit from. Great Britain has warned us at the 241st meeting of the UN Security Council on 5 February 1948, that "...raids and incidents will continue to occur until the question of Kashmir has been disposed by the Security Council... And, so long as fear dominates the minds of the peoples in that area of Punjab and of Kashmir, incidents will continue and situation will remain extremely grave."

We have also been warned against using the excuse of insurgents to kill the Kashmiri citizens. UN Security Council has been cautioned by Great Britain that, "We want a real total stoppage now, without further bloodshed, without more killing of the insurgents, whose votes, after all, we want in the plebiscite when it comes, our aim being to secure a responsible government, as the representative of India has stated. We must get such a scheme. The question is how to get it."

The answer to, "how to get it" lies in the admission that Government of India has recognised Hizbul Mujahideen as a legitimate armed resistance opposing the Indian rule in Kashmir. It has responded to the cease fire of 24 July 2000 and invited them to a dialogue outside the framework of Indian constitution. Seven member Hizb delegation presented a 12 point-Charter at the first meeting with representatives of the Government of India. Government of India (Late Prime Minister Atal Bihari Vajpayee) made an unconditional offer of talks to Hizb and the Kashmiri political leadership, functioning as an alliance All Parties Hurriyat Conference. Government of India has held talks with APHC as well.

The Council without prejudice to the agreed UN mechanism on Kashmir, could play a lead role by making recommendations that dialogue, under article 33 of the UN Charter, is the only instrument of engagement. Kashmiri armed resistance (Hizb) and political leadership (APHC) need a regular advice from the United Nations and the Government of Pakistan in any future dialogue with Government of India.

Government of India needs to disengage itself from the use of military force against the citizens of Kashmir. The armed resistance and political leadership in Kashmir are State Subjects and unless Government of India, accepts it, as pointed out at the UN in February 1948, all actions of Indian army in Kashmir remain in violation of UN Resolutions on Kashmir and constitute 'war crimes'.

It would not help Government of India or the interests of peace in the habitat, if India fails to honour bilateral and international commitments made on Kashmir. APHC leadership follows a constitutional discipline of its own and Hizb Chief Syed Salah Uddin has been recognised as leader of a legitimate armed resistance by India in 2000. Hizb Chief believes in an educated constituency in Kashmir and has always supported tripartite talks. In this regard he wrote a letter to all foreign diplomats based in Islamabad in June 2000. Hizb qualifies as one of the six interests groups described at the 241st meeting of UN Security Council meeting held on 5 February 1948. Recognition of six interest groups by the UN, highly militarised situation, massive abuse of human rights and a war against the people of Kashmir, are credible variables, for the armed resistance in Kashmir.

Many countries currently sitting in the Human Rights Council have remained involved in the UN debates on Kashmir, many more have chaired the UNCIP sessions and have contributed at the UN to conclude that, "Efforts of the people of Kashmir on both sides of the cease fire line and indeed, of the peoples of India and Pakistan also, would be concentrated on the task of organizing the methods and procedures to enable the people of Jammu and Kashmir to express freely their wishes," need to step forward to promote and protect human rights in Kashmir.

In the interim the Council should take note of a fresh wave of arrests carried out by Government of India through its National Investigation Agency. The arrest of three Kashmiri women, namely, Dukhtaraan-e-Milat chief Asiya Andrabi and her two associates Fehmeeda Sofi and Nahida Nasreen by National Investigation Agency of India and their detention in Tihar jail of Delhi is gross violation of human rights and persecution. Tihar jail has become a holding place for Kashmiri prisoners.